

Senate Study Bill 1210 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
HUMAN RESOURCES BILL BY
CHAIRPERSON MATHIS)

A BILL FOR

1 An Act creating an Iowa ABLE savings plan trust, providing
2 deductions and exclusions from the individual income tax
3 and inheritance tax relating to the trust, and including
4 retroactive and other applicability provisions.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 12I.1 **Purpose and definitions.**

2 1. The general assembly finds that the general welfare
3 and well-being of the state are directly related to the
4 health, maintenance, independence, and quality of life of its
5 disabled residents, and that a vital and valid public purpose
6 is served by the creation and implementation of programs that
7 encourage and make possible savings to secure funding for
8 disability-related expenses on behalf of individuals with
9 disabilities that will supplement, but not supplant, other
10 benefits provided by various federal, state, and private
11 sources. The creation of the means of encouragement for
12 citizens to invest in such a program represents the carrying
13 out of a vital and valid public purpose. In order to make
14 available to the citizens of the state an opportunity to fund
15 future disability-related expenses of individuals, it is
16 necessary that a public trust be established in which moneys
17 may be invested for payment of future disability-related
18 expenses of an individual.

19 2. As used in this chapter, unless the context otherwise
20 requires:

21 *a. "Account balance limit"* means the maximum allowable
22 aggregate balance of an account established for a designated
23 beneficiary. Account earnings, if any, are included in the
24 account balance limit.

25 *b. "Account owner"* means an individual who is a resident of
26 this state and who enters into a participation agreement under
27 this chapter for the payment of qualified disability expenses
28 on behalf of a designated beneficiary.

29 *c. "Designated beneficiary"* means an individual who is a
30 resident of this state and who meets the definition of *"eligible*
31 *individual"* in section 529A of the Internal Revenue Code.

32 *d. "Internal Revenue Code"* means the same as defined in
33 section 422.3.

34 *e. "Iowa ABLE savings plan trust" or "trust"* means the trust
35 created under section 12I.2.

1 *f. "Participation agreement"* means an agreement between the
2 account owner and the trust entered into under this chapter.

3 3. *"Qualified disability expenses"* means the same as defined
4 in section 529A of the Internal Revenue Code.

5 Sec. 2. NEW SECTION. **12I.2 Creation of Iowa ABLE savings**
6 **plan trust.**

7 An Iowa ABLE savings plan trust is created. The treasurer of
8 state is the trustee of the trust, and has all powers necessary
9 to carry out and effectuate the purposes, objectives, and
10 provisions of this chapter pertaining to the trust, including
11 the power to do all of the following:

12 1. Make and enter into contracts necessary for the
13 administration of the trust created under this chapter.

14 2. Enter into agreements with the state, or any federal or
15 other state agency, or other entity as required to implement
16 this chapter.

17 3. Carry out the duties and obligations of the trust
18 pursuant to this chapter.

19 4. Accept any grants, gifts, legislative appropriations,
20 and other moneys from the state, any unit of federal, state, or
21 local government, or any other person, firm, partnership, or
22 corporation which the treasurer of state shall deposit into the
23 administrative fund or program fund.

24 5. Participate in any federal, state, or local governmental
25 program for the benefit of the trust.

26 6. Procure insurance against any loss in connection with the
27 property, assets, or activities of the trust.

28 7. Enter into participation agreements with account owners.

29 8. Make payments to designated beneficiaries pursuant to
30 participation agreements.

31 9. Make refunds to account owners upon the termination
32 of participation agreements, and partial nonqualified
33 distributions to account owners, pursuant to this chapter and
34 the limitations and restrictions set forth in this chapter.

35 10. Invest moneys from the program fund in any investments

1 that are determined by the treasurer of state to be
2 appropriate.

3 11. Engage investment advisors, if necessary, to assist in
4 the investment of trust assets.

5 12. Contract for goods and services and engage personnel
6 as necessary, including consultants, actuaries, managers,
7 legal counsel, and auditors for the purpose of rendering
8 professional, managerial, and technical assistance and advice
9 to the treasurer of state regarding trust administration and
10 operation.

11 13. Establish, impose, and collect administrative fees
12 and charges in connection with transactions of the trust, and
13 provide for reasonable service charges, including penalties for
14 cancellations and late payments with respect to participation
15 agreements.

16 14. Administer the funds of the trust.

17 15. Prepare and file reports and notices.

18 16. Adopt rules pursuant to chapter 17A for the
19 administration of this chapter.

20 Sec. 3. NEW SECTION. 12I.3 Participation agreements for
21 trust.

22 The trust may enter into participation agreements with
23 account owners pursuant to the following terms and agreements:

24 1. *a.* The treasurer of state shall allow only one
25 participation agreement per designated beneficiary.

26 *b.* The account owner must also be the designated beneficiary
27 of the account. However, a trustee or legal guardian may
28 be designated as custodian of an account for a designated
29 beneficiary who is a minor or who lacks capacity to enter into
30 a participation agreement if such designation is not prohibited
31 under section 529A of the Internal Revenue Code.

32 *c.* The treasurer of state shall set an annual contribution
33 limit and account balance limit to maintain compliance with
34 section 529A of the Internal Revenue Code. A contribution
35 shall not be permitted to the extent it exceeds the annual

1 contribution limit or causes the aggregate balance of the
2 account established for the designated beneficiary to exceed
3 the applicable account balance limit.

4 *d.* The maximum amount that may be deducted for Iowa income
5 tax purposes shall not exceed the maximum deductible amount
6 determined for the year pursuant to section 12D.3, subsection
7 1, paragraph "a". This maximum amount applies per designated
8 beneficiary per year.

9 *e.* Participation agreements may be amended to provide
10 for adjusted levels of contributions based upon changed
11 circumstances or changes in disability-related expenses.

12 *f.* Any person may make contributions pursuant to a
13 participation agreement on behalf of a designated beneficiary
14 under rules adopted by the treasurer of state.

15 2. The execution of a participation agreement by the trust
16 shall not guarantee in any way that future disability-related
17 expenses will be equal to projections and estimates provided by
18 the trust or that the account owner or designated beneficiary
19 is guaranteed any of the following:

20 *a.* A return of principal.

21 *b.* A rate of interest or other return from the trust.

22 *c.* Payment of interest or other return from the trust.

23 3. *a.* A designated beneficiary under a participation
24 agreement may be changed as permitted under rules adopted by
25 the treasurer of state upon written request of the account
26 owner as long as such change would be permitted by section 529A
27 of the Internal Revenue Code.

28 *b.* Participation agreements may otherwise be freely amended
29 throughout their terms in order to enable account owners to
30 increase or decrease the level of participation, change the
31 designated beneficiary, and carry out similar matters as
32 authorized by rule.

33 4. Each participation agreement shall provide that the
34 participation agreement may be canceled upon the terms and
35 conditions, and upon payment of applicable fees and costs set

1 forth and contained in the rules adopted by the treasurer of
2 state.

3 Sec. 4. NEW SECTION. **12I.4 Program and administrative funds**
4 **— investment and payment.**

5 1. *a.* The treasurer of state shall segregate moneys
6 received by the trust into two funds: the program fund and the
7 administrative fund.

8 *b.* All moneys paid by account owners or other persons
9 on behalf of a designated beneficiary in connection with
10 participation agreements shall be deposited as received into
11 separate accounts for each designated beneficiary within the
12 program fund.

13 *c.* Contributions to the trust made on behalf of designated
14 beneficiaries may only be made in the form of cash.

15 *d.* An account owner or designated beneficiary is not
16 permitted to provide investment direction regarding program
17 contributions or earnings held by the trust.

18 2. Moneys accrued by account owners in the program fund
19 of the trust may be used for payments of qualified disability
20 expenses.

21 3. Moneys in the account of a designated beneficiary may
22 be claimed by the Iowa Medicaid program as provided in section
23 529A(f) of the Internal Revenue Code and subject to limitations
24 imposed by the treasurer of state.

25 Sec. 5. NEW SECTION. **12I.5 Cancellation of agreements.**

26 An account owner may cancel a participation agreement at
27 will. Upon cancellation of a participation agreement, an
28 account owner shall be entitled to the return of the account
29 owner's account balance.

30 Sec. 6. NEW SECTION. **12I.6 Repayment and ownership of**
31 **payments and investment income — transfer of ownership rights.**

32 1. *a.* An account owner retains ownership of all
33 contributions made on behalf of a designated beneficiary under
34 a participation agreement up to the date of utilization for
35 payment of qualified disability expenses of the designated

1 beneficiary.

2 *b.* All income derived from the investment of the
3 contributions made on behalf of a designated beneficiary shall
4 be considered to be held in trust for the benefit of the
5 designated beneficiary.

6 2. In the event the program is terminated prior to
7 payment of qualified disability expenses for the designated
8 beneficiary, the account owner is entitled to a refund of the
9 account owner's account balance.

10 3. Any amounts which may be paid to any person or persons
11 pursuant to the Iowa ABLE savings plan trust but which are not
12 listed in this section are owned by the trust.

13 4. An account owner may transfer ownership rights to
14 another designated beneficiary, including a gift of the
15 ownership rights to a designated beneficiary who is a minor, in
16 accordance with rules adopted by the treasurer of state and the
17 terms of the participation agreement, so long as the transfer
18 would be permitted by section 529A of the Internal Revenue
19 Code.

20 5. An account owner shall not be entitled to utilize any
21 interest in the trust as security for a loan.

22 Sec. 7. NEW SECTION. **12I.7 Reports — annual audited**
23 **financial report — reports under federal law.**

24 1. *a.* The treasurer of state shall submit an annual
25 audited financial report, prepared in accordance with generally
26 accepted accounting principles, on the operations of the trust
27 by November 1 to the governor and the general assembly.

28 *b.* The annual audit shall be made either by the auditor
29 of state or by an independent certified public accountant
30 designated by the auditor of state and shall include direct and
31 indirect costs attributable to the use of outside consultants,
32 independent contractors, and any other persons who are not
33 state employees.

34 2. The annual audit shall be supplemented by all of the
35 following information prepared by the treasurer of state:

1 *a.* Any related studies or evaluations prepared in the
2 preceding year.

3 *b.* A summary of the benefits provided by the trust,
4 including the number of account owners and designated
5 beneficiaries in the trust.

6 *c.* Any other information deemed relevant by the treasurer of
7 state in order to make a full, fair, and effective disclosure
8 of the operations of the trust.

9 3. The treasurer of state shall prepare and submit to the
10 secretary of the United States treasury or other required party
11 any reports, notices, or statements required under section 529A
12 of the Internal Revenue Code.

13 Sec. 8. NEW SECTION. 12I.8 Tax considerations.

14 1. For federal income tax purposes, the Iowa ABLE savings
15 plan trust shall be considered a qualified ABLE program exempt
16 from taxation pursuant to section 529A of the Internal Revenue
17 Code. The Iowa ABLE savings plan trust meets the requirements
18 of section 529A(b) of the Internal Revenue Code as follows:

19 *a.* Pursuant to section 12I.3, subsection 1, paragraph "*a*",
20 only one account per designated beneficiary is allowed.

21 *b.* Pursuant to section 12I.3, subsection 1, paragraph "*c*",
22 a maximum contribution level and account balance level is
23 established.

24 *c.* Pursuant to section 12I.3, subsection 1, paragraph
25 "*f*", any person may make contributions to an account that is
26 established for the purpose of meeting the qualified disability
27 expenses of the designated beneficiary of the account.

28 *d.* Pursuant to section 12I.4, subsection 1, paragraph
29 "*b*", a separate account is established for each designated
30 beneficiary.

31 *e.* Pursuant to section 12I.4, subsection 1, paragraph "*c*",
32 contributions may only be made in the form of cash.

33 *f.* Pursuant to section 12I.4, subsection 1, paragraph "*d*",
34 an account owner or designated beneficiary is not permitted to
35 provide investment direction regarding program contributions

1 or earnings held by the trust.

2 ***g.*** Pursuant to section 12I.6, subsection 5, an account owner
3 shall not pledge any interest in the trust as security for a
4 loan.

5 2. State income tax treatment of the Iowa ABLE savings plan
6 trust shall be as provided in section 422.7, subsections 34 and
7 34A.

8 3. State inheritance tax treatment of interests in Iowa ABLE
9 savings plans shall be as provided in section 450.4, subsection
10 9.

11 Sec. 9. NEW SECTION. 12I.9 Property rights to assets in
12 trust.

13 1. The assets of the trust shall at all times be preserved,
14 invested, and expended solely and only for the purposes of the
15 trust and shall be held in trust for the account owners and
16 designated beneficiaries.

17 2. Except as provided in section 12I.4, subsection 3, no
18 property rights in the trust shall exist in favor of the state.

19 3. Except as provided in section 12I.4, subsection 3, the
20 assets of the trust shall not be transferred or used by the
21 state for any purposes other than the purposes of the trust.

22 Sec. 10. NEW SECTION. 12I.10 Construction.

23 This chapter shall be construed liberally in order to
24 effectuate its purpose.

25 Sec. 11. Section 422.7, Code 2015, is amended by adding the
26 following new subsections:

27 NEW SUBSECTION. 34. *a.* Subtract the maximum contribution
28 that may be deducted for Iowa income tax purposes for a
29 contribution on behalf of a designated beneficiary to the Iowa
30 ABLE savings plan trust pursuant to section 12I.3, subsection
31 1, paragraph “d”.

32 *b.* Add the amount resulting from the cancellation of a
33 participation agreement refunded to the taxpayer as an account
34 owner in the Iowa ABLE savings plan trust to the extent
35 previously deducted by the taxpayer or any other person as a

1 contribution to the trust.

2 c. Add the amount resulting from a withdrawal made by a
3 taxpayer from the Iowa ABLE savings plan trust for purposes
4 other than the payment of qualified disability expenses to the
5 extent previously deducted by the taxpayer or any other person
6 as a contribution to the trust.

7 NEW SUBSECTION. 34A. Subtract, to the extent included,
8 income from interest and earnings received from the Iowa ABLE
9 savings plan trust created in chapter 12I.

10 Sec. 12. Section 450.4, Code 2015, is amended by adding the
11 following new subsection:

12 NEW SUBSECTION. 9. On the value of any interest in the Iowa
13 ABLE savings plan trust created in chapter 12I.

14 Sec. 13. APPLICABILITY. This Act applies to contributions
15 to the Iowa ABLE savings plan trust made, and qualified
16 disability expenses incurred, on or after July 1, 2015.

17 Sec. 14. APPLICABILITY. The section of this Act amending
18 section 450.4 applies to estates of decedents dying on or after
19 July 1, 2015.

20 Sec. 15. RETROACTIVE APPLICABILITY. The section of this
21 Act amending section 422.7 applies retroactively to January 1,
22 2015, for tax years beginning on or after that date.

23 EXPLANATION

24 The inclusion of this explanation does not constitute agreement with
25 the explanation's substance by the members of the general assembly.

26 This bill creates an Iowa ABLE (Achieving A Better Life
27 Experience) savings plan trust and provides for various Iowa
28 individual income tax and inheritance tax benefits.

29 BACKGROUND. On December 19, 2014, the federal Achieving
30 A Better Life Experience Act of 2014 (ABLE Act) was enacted
31 as part of the federal Tax Increase Prevention Act of 2014
32 (Pub. L. No. 113-295). The ABLE Act allows states to create
33 programs to assist individuals in saving private funds for
34 the purpose of supporting individuals with disabilities.
35 Qualifying state programs will allow for the establishment

1 of accounts into which eligible disabled individuals or
2 others may make contributions for the payment of future
3 disability-related expenses of the eligible disabled
4 individual. Funds and earnings in accounts established
5 under qualifying state programs are afforded federal benefits
6 in certain circumstances, including federal tax exemption,
7 bankruptcy protection, and exclusion from consideration under
8 certain means-tested programs, such as Medicaid or supplemental
9 security income.

10 IOWA ABLE SAVINGS PLAN TRUST. The bill creates the Iowa
11 ABLE savings plan trust (trust) under the treasurer of state
12 (state treasurer) that will meet the requirements of §529A of
13 the Internal Revenue Code (federal ABLE program). The state
14 treasurer is the trustee of the trust and has numerous powers,
15 as specified in the bill, for the purpose of carrying out the
16 purpose of the trust.

17 The trust is authorized to enter into participation
18 agreements with individuals for the payment of future qualified
19 disability expenses. "Qualified disability expenses" means the
20 same as defined under the federal ABLE program, which generally
21 defines the term to include expenses related to a designated
22 beneficiary's education, housing, transportation, employment
23 training and support, assistive technology and personal support
24 services, health, prevention and wellness, financial management
25 and administrative services, legal fees, expenses for oversight
26 and monitoring, funeral and burial expenses, and other expenses
27 approved by the secretary of the United States treasury
28 (secretary).

29 The person with whom the state treasurer enters into a
30 participation agreement must be both the account owner and
31 designated beneficiary. However, the bill allows a trustee
32 or legal guardian to be designated as custodian of an account
33 for a designated beneficiary who is a minor or who lacks
34 capacity to enter into a participation agreement, provided such
35 designation would be allowed under the federal ABLE program.

1 "Designated beneficiary" is defined in the bill as a person
2 who is a resident of Iowa and who qualifies as an eligible
3 individual under the federal ABLE program, which includes
4 individuals who are entitled to benefits based on blindness or
5 disability under Title II (disability insurance) or Title XVI
6 (supplemental security income) of the federal Social Security
7 Act if such blindness or disability occurred before attaining
8 26 years of age, and if such individual files a disability
9 certification with the secretary.

10 The bill requires the state treasurer to maintain a separate
11 account in the trust for each designated beneficiary of a
12 participation agreement. Only one participation agreement
13 shall be allowed per designated beneficiary. Any person is
14 allowed to make contributions in the form of cash to an account
15 on behalf of a designated beneficiary. The trust is required
16 to maintain limits on the annual contributions to an account,
17 and the aggregate balance in an account, matching those set
18 forth in the federal ABLE program, which prohibits annual
19 contributions to an account from exceeding the annual gift tax
20 exclusion amount (\$14,000 for 2015), and prohibits an aggregate
21 account balance from exceeding the limit set by a state under
22 its qualified tuition program (currently \$320,000 for Iowa).

23 The bill provides other various terms and conditions for
24 participation agreements, use and segregation of trust funds,
25 cancellation of agreements and refund of account balances,
26 and ownership rights in the trust. The bill provides that an
27 account may be claimed by the Iowa Medicaid program upon the
28 death of the designated beneficiary, in accordance with the
29 federal ABLE program. The bill requires the state treasurer to
30 prepare and submit audited financial reports to the governor
31 and general assembly, and further requires the state treasurer
32 to comply with any reporting requirements of the federal ABLE
33 program. The bill applies to qualified disability expenses
34 incurred on or after July 1, 2015.

35 IOWA TAX BENEFITS. The bill provides several tax benefits

1 under the trust. First, the value of any interest in the trust
2 of a decedent dying on or after July 1, 2015, is excluded
3 from the Iowa inheritance tax. Second, contributions to the
4 trust made on or after July 1, 2015, on behalf of a designated
5 beneficiary are deductible from the Iowa individual income
6 tax up to the maximum amount allowed per beneficiary per year
7 for purposes of the Iowa educational savings plan trust in
8 Code chapter 12D. For 2015, that amount is set at \$3,163.
9 Any amounts refunded to a taxpayer from the cancellation of
10 a participation agreement or that are withdrawn for purposes
11 other than the payment of qualified disability expenses of the
12 designated beneficiary must be included in Iowa net income to
13 the extent they were previously deducted by the taxpayer or any
14 other person as a contribution. Third, income and earnings
15 from the trust are exempt from the Iowa individual income tax.
16 The individual income tax benefits apply retroactively to
17 January 1, 2015, for tax years beginning on or after that date.